

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PENGUIN RANDOM HOUSE LLC; SIMON & :
SCHUSTER, INC.; ALAN O. SCHWARTZ, :
as trustee of THE TRUMAN CAPOTE :
LITERARY TRUST; JOHN SAMPAS as :
Literary Representative of THE :
ESTATE OF JACK KEROURAC; NANCY :
BUMP; ANTHONY M. SAMPAS; JOHN :
LASH, Executor of THE ESTATE OF :
JAN KEROUAC; THE DR. ARTHUR C. :
CLARKE TRUST; HEMINGWAY COPYRIGHTS, :
L.L.C.; THE PATRICK HEMINGWAY AND :
CAROL T. HEMINGWAY REVOCABLE :
LIVING TRUST; and THE HEMINGWAY :
FAMILY TRUST, :

Plaintiffs, :

-v- :

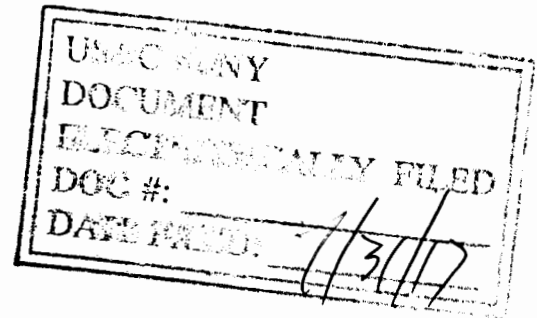
FREDERIK COLTING and MELISSA :
MEDINA, d/b/a MOPPET BOOKS, :

Defendants. :

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JED S. RAKOFF, U.S.D.J.

17-cv-386 (JSR)

ORDER



Before the Court are plaintiffs' motion for partial summary judgment and defendants' cross motion for summary judgment. Upon consideration, the Court denies defendants' motion and grants plaintiffs' motion in part and denies it in part. Specifically, the Court grants summary judgment to plaintiffs on the issue of liability on all nine counts of copyright infringement (including rejecting the affirmative defense of fair use as a matter of law). On the issue of willfulness, however, the defendants, based on representations made by their counsel in open court, see Transcript, dated July 24, 2017, will be permitted, if they wish, to raise an

advice of counsel defense. If they decide to raise the defense, the parties should meet and confer in order to propose to the Court an expedited schedule for discovery and supplemental briefing limited to this issue. The parties should then jointly call the Court no later than August 1, 2017, to present their joint scheduling proposal for their discovery and supplemental briefing, or, if they cannot agree on a scheduling proposal, to present their differences, which the Court will then resolve. Conversely, if defendants choose not to raise an advice of counsel defense on willfulness, they should so advise the Court in writing on or before August 1, 2017.

A memorandum explaining the reasons for these rulings will issue in due course.

SO ORDERED.

Dated: New York, NY
July 28, 2017


JED S. RAKOFF, U.S.D.J.